

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA

CURT A. ROSANDER,	)	
	)	
Plaintiff,	)	No. 05-02656 BZ
	)	
v.	)	<b>ORDER DENYING PLAINTIFF'S</b>
	)	<b>MOTION FOR SUMMARY JUDGMENT</b>
JOANNE B. BARNHART,	)	<b>AND GRANTING DEFENDANT'S</b>
Commissioner of Social	)	<b>CROSS-MOTION FOR SUMMARY</b>
Security	)	<b>JUDGMENT</b>
	)	
Defendant.	)	
_____	)	

Plaintiff Curt Rosander appeals from a final decision by the Commissioner of Social Security (Commissioner) under 42 U.S.C. § 405(g) affirming the decision of the Administrative Law Judge (ALJ). The ALJ found that since plaintiff was capable of performing light work with certain restrictions, he was not disabled and therefore not eligible for Disability or Disability Insurance Benefits, or Supplemental Security Income under Sections 216(I), 223, and 1614(a)(3) of the Social Security Act. Tr. at 20.

The Social Security Administration Appeals Council declined to review the ALJ decision. Tr. 6-9. Plaintiff

1 timely requested judicial review pursuant to 42 U.S.C §405(g),  
2 and moved for summary judgment, requesting that the case be  
3 remanded to the Commissioner with instructions to award and  
4 pay plaintiff disability benefits. In her reply, defendant  
5 made a cross-motion for summary judgment.

6 The Commissioner's decision to deny benefits will be  
7 disturbed only if it is not supported by substantial evidence  
8 or is based on legal error. 42 U.S.C. § 405(g); Batson v.  
9 Comm'r of Soc. Sec., 359 F.3d 1190, 1193 (9th Cir. 2004);  
10 Lewis v. Apfel, 236 F.3d 503, 509 (9th Cir. 2001).

11 Substantial evidence means more than a mere scintilla but less  
12 than a preponderance. Tackett v. Apfel, 180 F.3d 1094, 1098  
13 (9th Cir. 1999). It means such relevant evidence as a  
14 reasonable mind might accept as adequate to support a  
15 conclusion. Lewis, 236 F.3d at 509. As a result of the  
16 limited scope of the review, the ALJ's decision will be upheld  
17 where the evidence is conflicting, Allen v. Secretary of  
18 Health & Human Servs., 726 F.2d 1470, 1473 (9th Cir. 1984), or  
19 open to multiple interpretations. Burch v. Barnhart, 400 F.3d  
20 676, 679 (9th Cir. 2005).

21 The ALJ found that plaintiff had not performed  
22 substantial gainful activity since June 1, 2001 and that he  
23 had a history of severe grand mal seizures, alcohol abuse and  
24 back pain. Tr. at 19. The ALJ also found that plaintiff did  
25 not have an impairment or a combination of impairments of the  
26 level of severity listed in or medically equal to that in the  
27 grid regulations, the Listing of Impairments in Appendix 1 to  
28 Subpart P of Regulation No. 4. Id. The ALJ found that

1 plaintiff could not perform past relevant work but was capable  
2 of performing other jobs including surveillance monitor, table  
3 worker and information clerk. Tr. at 20.

4 While there is some conflicting evidence in the record,  
5 substantial evidence supports the ALJ's conclusions. The ALJ  
6 relied in part on the internal medical evaluation, dated  
7 October 28, 2003, of Jaskaran Momi, M.D. of the Bayview  
8 Medical Clinic. Dr. Momi examined plaintiff, observing that  
9 plaintiff was "awake, alert oriented" with "[f]ull range of  
10 movement in all directions" and there were no abnormalities.  
11 Tr. at 193. Dr. Momi was aware of plaintiff's complaints of  
12 seizures, low back pain and panic attacks, yet concluded that  
13 the "only limitation by history in this patient is that he  
14 should not be working on moving machinery, close to a large  
15 body of water or uneven surfaces" and plaintiff "can sit  
16 comfortably" for an 8-hour shift, "can stand and/or walk 1 to  
17 2 hours at a time" and "can lift and carry 25 pounds of weight  
18 most of the time." Tr. at 194. Plaintiff can control his  
19 seizures for the most part with regular medication, as most of  
20 his past seizures appear to have occurred after he  
21 discontinued or decreased his medication. Plaintiff offered  
22 only subjective evidence regarding his panic attacks and fear  
23 of public interaction, and there is sufficient evidence to  
24 support the ALJ's conclusion that these are not debilitating  
25 enough to preclude plaintiff from working. Substantial  
26 evidence supports the ALJ's decision that plaintiff's residual  
27 functional capacity is such that he could perform several  
28 light exertional jobs such as surveillance monitor, table

1 worker and information clerk.

2 Plaintiff challenges these findings, contending that the  
3 ALJ: (1) failed to consider plaintiff's Post Traumatic Stress  
4 Disorder (PTSD); (2) erroneously relied on plaintiff's  
5 activities of daily living; and (3) erroneously rejected  
6 evidence that plaintiff is unable to work.

7 Plaintiff first argues that the ALJ improperly discounted  
8 the evidence that he suffers from PTSD. The only medical  
9 evidence plaintiff presented of PTSD were diagnoses on June,  
10 15, 1998 and September 2, 1998. Tr. at 138. Neither  
11 diagnosis was certain, and there is no diagnosis of PTSD in  
12 the record after the date of onset of the alleged disability.

13 The ALJ gave "[c]areful consideration" to plaintiff's  
14 "subjective complaints and testimony which . . . are supported  
15 by few objective medical findings, and which are not fully  
16 credible." Tr. at 18. Plaintiff has not provided medical  
17 evidence that he suffered from PTSD during the time he now  
18 claims he was disabled, which he is required to do in order to  
19 receive benefits. He did not seek to supplement the record to  
20 include examinations or diagnoses regarding his claimed PTSD.  
21 Putting aside plaintiff's subjective complaints, there is  
22 substantial evidence in the record to support discounting  
23 plaintiff's claimed PTSD.

24 Plaintiff next argues that the ALJ's reliance on  
25 plaintiff's activities of daily living is legal error and not  
26 supported by substantial evidence. The ALJ noted that  
27 plaintiff's activities include "walking the dog, gardening,  
28 shopping, cooking, cleaning, and helping his parents." Tr. at

1 18. Plaintiff alleges that these actions are not inconsistent  
2 with his limitations and he should not be penalized for trying  
3 to perform common activities. He testified that he must  
4 maintain telephone contact with his mother when he takes the  
5 bus to go shopping, Tr. at 300-01, and that while cleaning he  
6 often must work slowly and take breaks because of his back.  
7 Tr. at 297.

8 Plaintiff is correct that the ability to complete  
9 activities at home does not necessarily transfer to the  
10 workplace. See Reddick v. Chater, 157 F.3d 715, 722 (9th Cir.  
11 1998). The ALJ, however, found that plaintiff was not  
12 disabled because plaintiff does not have a medically severe  
13 impairment or combination of impairments. Any error the ALJ  
14 may have committed in relying on plaintiff's daily activities  
15 to conclude that plaintiff could perform substantial gainful  
16 work was harmless. See Burch, 400 F.3d at 679. ("A decision  
17 of the ALJ will not be reversed for errors that are  
18 harmless.")

19 Plaintiff also contests the ALJ's rejection of the  
20 vocational expert's testimony suggesting there are no jobs for  
21 plaintiff. At the hearing, the ALJ asked two hypothetical  
22 questions regarding the types of jobs that plaintiff could  
23 perform. Tr. at 308-10. The ALJ asked the expert to consider  
24 jobs for people with characteristics similar to those of  
25 plaintiff, in age and education and with mild mobility and  
26 exertional limitations. Tr. at 308. The vocational expert  
27 listed surveillance monitor, table worker and information  
28 clerk as possible jobs, Tr. at 308-09, which the ALJ cited in

1 his decision. Tr. at 20. In his second hypothetical  
2 question, the ALJ then asked for possible jobs for people with  
3 moderate impairment with "concentration, persistence and  
4 pace." Tr. at 309. The expert testified that if moderate  
5 impairment meant losing 20% of a work day, such a scenario  
6 would preclude competitive employment. Tr. at 310.

7 Hypotheticals and a vocational expert's opinions are  
8 valuable only if they are supported by medical evidence.  
9 Magallanes v. Bowen, 881 F.2d 747, 756 (9th Cir. 1989). The  
10 only medical evidence in the record regarding plaintiff's  
11 moderate mental limitations are the reports of consulting  
12 psychologist, Dr. Gary Balestin, and DDS physician, Dr. Ida  
13 Hilliard. Dr. Balestin and Dr. Hilliard determined that  
14 plaintiff is moderately limited in following instructions,  
15 maintaining attention and concentration and performing at a  
16 consistent pace. Tr. at 170-71, 187-88. The ALJ may reject  
17 the conclusions in a medical report as long as he sets forth  
18 specific, legitimate reasons for doing so that are based on  
19 substantial evidence in the record. Magallanes, 881 F.2d at  
20 751; Jackson v. Barnhart, 2005 WL 2008037 at \* 7 (N.D. Cal.  
21 2005).

22 The ALJ accepted the reservations Dr. Balestin himself  
23 expressed in his report that Dr. Balestin's conclusions were  
24 "not corroborated by either his own or any other mental  
25 status findings." Tr. at 18. In his report, Dr. Balestin  
26 cast doubt on his findings of moderate limitations, noting  
27 that the intelligence estimates "appeared inconsistent with  
28 clinical presentation, reflecting lack of effort" and finding

1 that plaintiff had at least low average mental capacity. Tr.  
2 at 168-69.

3 The decision does not mention Dr. Hilliard's report.  
4 Dr. Hilliard's report consists of a form with checked boxes  
5 without explanation or elaboration of her markings. The ALJ  
6 did not commit legal error in disregarding Dr. Hilliard's  
7 report. See Stempien v. Barnhart, 2002 U.S. Dist. LEXIS  
8 21670 \*6 (N.D. Cal. 2002) ("The ALJ also need not accept the  
9 opinion of any physician . . . if that opinion is brief,  
10 conclusory, and inadequately supported by clinical  
11 findings.")

12 Plaintiff contends that it was legal error for the ALJ  
13 to rely on Dr. Balestin's report to find that plaintiff is  
14 not disabled while rejecting Dr. Balestin's determinations  
15 that plaintiff has some moderate limitations. I disagree.  
16 That mischaracterizes Dr. Balestin's report, since it was the  
17 Doctor who questioned his own findings. To the extent there  
18 is a discrepancy, the ALJ is responsible for resolving any  
19 discrepancies between experts and within a single expert's  
20 opinion. See id. at 753. ("It is not necessary to agree  
21 with everything an expert witness says in order to hold that  
22 his testimony contains 'substantial evidence.')(internal  
23 quotations omitted). See also Clay v. Barnhart, 417 F.3d  
24 922, 930 (8th Cir. 2005)(holding that consulting physician's  
25 "opinion was equivocal and that it was not error for the ALJ  
26 to disregard his findings" about claimant's low IQ, given  
27 "his specific claim that [she] failed to put forth a serious  
28 effort when taking the IQ test"). Because the ALJ did not

1 find credible evidence of plaintiff's moderate limitations,  
2 he disregarded the vocational expert's testimony about  
3 hypothetical moderate limitations that would preclude  
4 competitive employment.

5 For the reasons described above, the ALJ's decision to  
6 deny plaintiff Disability or Disability Insurance Benefits,  
7 and Supplemental Security Income is supported by substantial  
8 evidence and free of legal error. Accordingly, **IT IS HEREBY**  
9 **ORDERED** that plaintiff's motion for summary judgment is  
10 **DENIED** and defendant's cross-motion for summary judgment is  
11 **GRANTED**.

12 DATED: March 10, 2006

13   
14 Bernard Zimmerman  
United States Magistrate Judge

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